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Forty-seventh session

SUMMARY RECORD OF THE 1224th MEETING

Held at Headquarters, New York,
on Friday, 2 April 1993, at 10 a.m.

Chairman: Mr. ANDO

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The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Guinea (CCPR/C/57/Add.2) (continued)

1. At the invitation of the Chairman, Mr. Thiam (Guinea) took a place at the Committee table.

2. Mr. POCAR, resuming the Committee's questioning of the delegation of Guinea under the list of issues, noted that the replies received thus far related more to the content of Guinean law than to its practice.

3. Referring to section II (e) of the list of issues, he said that the assurance that the incidence of torture and inhuman treatment had decreased in recent years, while perhaps somewhat optimistic, was nevertheless welcome. Guinean officials appeared to believe that they had a right to commit such acts against detainees, despite the provisions of the law. A programme of education in the application of the law was therefore necessary in order to change the mentality of officials. He agreed that such a process would require some time to show results.

4. Mr. HERNDL, referring to section II (c) of the list of issues, expressed concern at the frequent use of firearms by the public authorities and asked what regulations governed the use of firearms and what practical steps the Government had taken to limit their use.

5. With regard to article 10 of the Covenant, he wondered to what extent United Nations principles regarding the prevention of crime and the treatment of offenders had been taken into account in the formulation of national policy in that area.

6. He noted that, despite the provisions of articles 7 and 14 of the Basic Law which guaranteed freedom of religion, the Government had seen fit to move against the emergence of certain fundamentalist sects. He hoped the Government was aware that under article 18 of the Covenant, freedom to manifest one's religion or beliefs could be subject only to such limitations as were prescribed by law and were necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

7. He found it difficult to accept the claim that there were no minorities in Guinea, since the report itself made reference to a number of "national languages" (para. 135 (b)). It seemed therefore that article 27 of the Convention was applicable.

8. Mr. THIAM (Guinea) said that the right to life was enshrined in the Basic Law. Although the Penal Code provided the death penalty for extremely serious crimes, since 1987 no one had been executed in Guinea. In fact, the maintenance of the death penalty was more a deterrent to crimes which threatened the lives of others than a manifestation of the State's intention to apply that penalty. In that connection, a vigorous public debate was currently under way

(Mr. Thiam, Guinea)

on whether the death penalty should be abolished. He recalled that under the previous regime, the death penalty had frequently been applied for political crimes. He hoped that that practice would never recur in Guinea. Judges were currently required to hand down the sentences provided by law, which were proportional to the offences committed. The Basic Law, in fact, sought to create a new legal framework and a new legal thinking in Guinea. Unfortunately, there was no magic wand with which to abolish all the vestiges of the country's past. Time was needed to change people's mentalities and to progress towards the universal application of the Covenant in Guinea.

9. Replying to questions concerning the State Security Court and the military courts, he explained that those institutions had been abolished. They had been created on a tempor ry basis to deal with a particular situation which no longer existed.

10. The High Court of Justice had been established to exercise power of review over State officials, including the President of the Republic and candidates to national office, and to help dispel the idea that certain high officials could act with impunity.

11. On the question of disappearances, he acknowledged that hundreds of thousands of people had disappeared under the previous regime. The current Government had the will, but not the resources, to provide compensation to those who had suffered. It had therefore decided to create a legal framework which would guarantee that such events did not recur in Guinea. Despite its lack of resources, it had provided some modest assistance to those who had suffered most, especially women and children, and had returned all confiscated property to its rightful owners.

12. The practice of torture persisted, unfortunately, because it was difficult to change habits acquired over a period of 26 years, particularly since the new Government had been obliged to retain some officials of the former regime. The situation was better in urban centres than in rural areas and, on the whole, torture was now the exception rather than the rule; strenuous efforts were being made to eradicate those exceptions.

13. Replying to the question concerning a reported massacre by security forces, he said that an inquiry had been conducted, as a result of which a number of security officials had been tried and sentenced in accordance with the law.

14. The attitude of resignation of victims had been mentioned in the report (para. 135 (a)) not as an excuse for the continued violation of their human rights but as a reality which impeded the Government's efforts to deal severely with those responsible for violations.

15. Turning to the question of the alleged widespread use of firearms, he regretted that he did not have before him the text of the relevant legislation on the use of firearms. Such use was, however, regulated and security officials were prohibited from using lethal ammunition in performing their duties. He noted, in passing, that some of the students arrested in a recent protest had been found to be carrying military weapons.

(Mr. Thiam, Guinea)

16. On the question of secret detention centres, he pointed out that the centres that existed under the previous regime had been known to all Guineans. The problem had been that the legal authorities had no access to or control over them. Since 1988 there had been no detentions in those centres and he wished to state emphatically that there were currently no political prisoners in Guinea. Indeed, the Government was considering reopening one of the centres as a museum and a monument to the martyrs who had lost their lives there, thereby turning the page on a painful chapter in the country's history.

17. With regard to the arrest of 22 members of the RPG, the leaders of that political grouping had been told to await the promulgation of the Basic Law before organizing their public meeting. The Basic Law provided for such actions within a given legislative framework. The RPG had openly flouted the authorities' instructions and its meeting had thus violated public order. Its members had been arrested and tried by due process of law, which included the right to a proper defence.

18. With regard to article 66 of the Basic Law, the real significance of that provision was that the considerable powers of the President were subject to control by the National Assembly. In fact, the President could not make indiscriminate use of his powers without jeopardizing his mandate.

19. Turning to the question of prison conditions, he explained that in certain prisons inmates were separated by sex, age or the nature of their offence, while in others such separation was not possible. No one under the age of 16 was imprisoned, unless that person posed a threat to public order. A number of non-governmental organizations were working with the juvenile courts in rehabilitating juvenile offenders. He hoped that such initiatives could be extended throughout Guinea, but lack of resources and the priorities imposed under the country's structural adjustment programme made that an unlikely prospect in the near future.

20. Stricter measures such as imprisonment were imposed on juvenile offenders between the ages of 16 and 18 if they posed a threat to public order. Otherwise, they were placed with foster families or in the care of teachers or representatives of non-governmental organizations. Government policy aimed at their rehabilitation, but that was not always easy to achieve because of lack of resources.

21. He was unaware of the exact number of magistrates, many of whom were currently undergoing retraining in Senegal and France. One of the first acts of the Second Republic had been to prohibit clerks from acting as judges. In order to promote the expansion of the legal profession, programmes had been established to provide further training.

22. Pregnant women could not be executed until they had given birth, but there was no record of any woman having been executed. In addition, individuals under 18 or over 62 could not be sentenced to death.

23. The right to strike was recognized in both the Basic Law and the Labour Code. Three major labour unions operated throughout the country.

(Mr. Thiam, Guinea)

24. The situation in Liberia had had a major impact on Guinea, which had given shelter to 485,000 refugees in 1992. The recent escalation of the conflict was expected to bring some 8,000 more refugees to its territory. Since the refugees generally belonged to the same ethnic group as their hosts, no cultural problems had arisen, but the situation with regard to sanitation, nutrition, health and the environment was becoming increasingly serious. Just providing cooking fuel for the refugees had led to significant deforestation. Guinea was pursuing a policy of encouraging self-sufficiency among the refugees which had resulted in the clearing of even more forest for additional crop land. Continuing international assistance to those refugees would be required to supplement Guinea's own meagre resources.

25. With regard to pre-trial detention, the Attorney-General was the designated authority for authorizing detention and investigating charges, whereas under the old regime, detention could be authorized by any official. Respect for the 72-hour limit on pre-trial detention was strictly enforced and authorities were punished if that period was exceeded. The enforcement authority of the Attorney-General had been strengthened as well.

26. Complete freedom of religion was enjoyed in Guinea, and Government authorities intervened only when mutual tolerance was affected. Muslims and Christians had coexisted for many years, and intermarriage between religious and ethnic groups was frequent. No specific legislation on discrimination had been passed because the Government felt no need for it.

27. Mr. SADI said he was delighted to find that freedom and democracy were being established in Guinea and that efforts had been made to improve the country's human rights record. During the dialogue, he had been struck by the fact that laws could be changed much more easily than the mentality of an entire country. A culture of human rights and democracy was needed, which could not be built through the enactment of laws or the creation of structures. In order to foster such a culture, the Government must rely on early education in human rights and democracy. The dissemination of human rights information in rural areas and a determined effort to prosecute serious human rights violations were also important.

28. The problem was how to overcome the legacy of the former regime in the face of people's resignation. Compensation alone was not enough; the most effective way to prevent abuses from recurring was to bring violators to justice. He had hoped that Guinea would offer an example to other African countries by creating special tribunals to prosecute violations committed under the previous regime; that might also help to change people's mentalities. The Government must lead the way by showing that it was determined to prosecute human rights abuses.

29. Mr. EL-SHAFEI said that, through the oral responses to questions, he had gained a clear picture of the efforts which the Second Republic was making, during the transitional period, to rid the country of the legacy of its painful past. To summarize his main areas of concern, the new Government had inherited a cruel system of ill-treatment of prisoners. Torture, which had been commonplace, was currently outlawed, but the fact that some incidents continued to occur was cause for concern to the Committee. The legal and political guarantees contained in the Basic Law should help to improve the situation with

(Mr. El-Shafei)

regard to disappearances. It might be useful to provide guarantees of minority rights in law, and he hoped that article 27 of the Covenant would be taken into account.

30. He was encouraged by the evidence of positive change in Guinea and hoped that the new institutions would fulfil all their international obligations.

31. Mr. PRADO-VALLEJO welcomed the steps taken in Guinea towards democracy, which was essential for the full enjoyment of human rights. Based on the dialogue, he wished to make a number of recommendations in areas of concern to the Committee. First, dissemination of information about the Covenant must be promoted so that individuals would know their rights, and human rights education must be introduced in schools. Second, domestic legislation must be made fully compatible with the Covenant in order to provide human rights safeguards. His major recommendation in that area was the establishment of the right of appeal against decisions of the State Security Court and the military courts which might jeopardize the right to life. Third, detainees must be informed of the charges against them in order to be able to prepare their defence, and the Government must provide legal assistance. Fourth, the time-limit for pre-trial detention must be respected and detention should be the exception, not the rule. Fifth, the Government must make greater efforts to investigate abuses in order to guarantee remedies to the victims and to punish the guilty parties.

32. Mr. HERNDL said that everyone recognized that Guinea was a State in transition towards a true democracy in which human rights would be a fundamental element of State policy; as noted in paragraph 4 of the second periodic report, it would be a State which was subject to the rule of law and which respected human rights and individual freedoms.

33. The new Basic Law compared very favourably with the old Constitution, even though there were still some gaps in it. It would be worth carrying out a review of all the special courts which had been established over the years to remedy specific situations, particularly military courts and other emergency bodies; all criminal matters should be dealt with in ordinary courts.

34. The objective of establishing a genuine culture of human rights in Guinea, referred to in the final paragraph of the report, would respond to the wishes of the Committee and also of the international community, and he hoped that it would be achieved.

35. Mr. WENNERGREN said that while it was deplorable that so many family and personal tragedies had occurred in Guinea since 1984, it was gratifying that the era in question was now over. It had not been possible to change everything immediately after the change of Government in 1984, and much had happened since then that had breached the Covenant and human rights principles, including disappearances, murders, torture, illegal detention and restrictions on freedom of expression and political freedom. However, it was time to look to the future. He was sure that the Guinean authorities were trying to assist all those who had suffered in the past. It was significant that Guinea now had a Basic Law and was proceeding on that basis towards a future of democracy and a state of law in which the human person and human dignity would be upheld. By

(Mr. Wennergren)

the time the next periodic report was prepared, the Guinean authorities should be close to fulfilling all their obligations under the Covenant.

36. Mrs. CHANET said that in any period of transition, much that had been undertaken remained incomplete. The Guinean authorities also had to deal with the legacy of the past. She welcomed the positive developments in Guinea: the Basic Law, its approval by referendum in 1990, the development of a multi-party system, the abolition of the State Security Court and the country's forthcoming accession to the Optional Protocol. However, some matters of concern remained, especially with regard to laws authorized under a broad interpretation of public order which did not accord with the Covenant.

37. It was regrettable that there were still cases of torture and ill-treatment in Guinea. Although it had been said that there were no longer any political prisoners in Guinea, the rules governing detention were somewhat vague and undermined respect for the applicable provisions of the Covenant.

38. In a period of intense legislative activity, it should be ensured that new laws were in conformity with the Covenant. Basic legal conditions must be created to ensure respect for the fundamental rights enshrined in the Covenant. The legislation on firearms must accord strictly with the recommendations of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. There must be strict rules on detention. The 72-hour limit for pre-trial detention was too long. No systematic information was available, in accordance with article 9 of the Covenant, on the reasons for arrest, and it seemed that no records were kept of the date, duration and place of detention of detainees to which families could have access. Furthermore, there seemed to be no system for the judicial authorities to monitor places of detention or even the records of detainees. Legal limits on preventive detention, were needed, and the right to be brought before a judge must be guaranteed in accordance with the Covenant. Considerable efforts were needed to increase the level of public information and education, and to improve the training of law enforcement officials.

39. Mr. BRUNI CELLI said that while the Guinean Government was making efforts during the transitional period to ensure respect for human rights, much remained to be done to bring domestic legislation into line with the Covenant and to ensure implementation of the Basic Law in order to develop a culture of human rights.

40. Although the representative of Guinea had noted that it was much easier to change laws than to change habits and customs, that could not be an excuse for allowing torture to continue. States were obliged to create conditions that would ensure respect for human rights, including police oversight and the provision of education and information to police officers, prison officials and members of the armed forces. There must be a speedy investigation of reports of human rights violations and those responsible must be punished, including any senior officials who gave orders for such violations.

41. Mr. FODOR said that the report provided little information on how the provisions of the Covenant were being applied in Guinea. Over 60 individuals arrested in Guinea in 1984 and 1985 remained unaccounted for. The reasoning

(Mr. Fodor)

that the people responsible for those disappearances were probably dead was not satisfactory; a proper investigation was needed to find out who was responsible.

42. The representative of Guinea had admitted that torture existed in Guinea. It was unacceptable that torture and ill-treatment of detainees should occur in any State party, even if the mentality of certain people or groups of people needed to be changed. There was also a need for tighter monitoring of the activities of the police and security forces, better training of those forces and more effective investigation and expeditious sentencing of those who used excessive force. It would appear that the rules and regulations governing the use of firearms by police and security forces were not strict enough and that compliance with those rules was not properly monitored.

43. Given the favourable developments in Guinea, it was difficult to see why it had been necessary to set up a High Court of Justice to replace the State Security Court.

44. The Guinean delegation had indicated that Guinea had embarked on a process of democratization; further efforts were needed to achieve the objective of establishing a genuine culture of human rights in Guinea.

45. Mrs. EVATT said that the representative of Guinea had spoken very frankly about the difficulties and obstacles his country faced. Law enforcement officials and even the judiciary seemed to be unfamiliar with the responsibilities and limitations on power which were inherent in respect for the rule of law and which involved the acceptance and enforcement of the Basic Law and of judicial orders. There was a need to reach the hearts and minds of law enforcement officials in that respect, and the lead should come from the highest levels of Government. There was also a need for strict compliance with the rules governing detention, and for further training of law enforcement officials.

46. It might be useful if there were an independent agency to which individuals could complain of human rights abuses, with the necessary standing to make investigations and institute legal proceedings. It would also help if the Government could encourage non-governmental human rights organizations to consider problems affecting the implementation of human rights and could consult them on the preparation of reports to the Committee. Positive action was needed to remove not only laws which discriminated against women but also the barriers which arose from traditional attitudes towards the role of women in society and from practices which robbed women of their place in society, so that they could have equal access to education and to true participation in political and social life.

47. Mr. FRANCIS said that the Committee could rely on the representative of Guinea, as a senior official in the Guinean administration, to be a watchdog for human rights in Guinea. On the question of torture, he felt that such abuses could not persist if senior officials made frequent visits to places of detention; such visits should be unannounced. Mr. Thiam should suggest that the Guinean Association for Human Rights also monitor detention centres by making visits to them; that Association could do much to assist in achieving the objectives to which Guinea was committed.

48. Mr. NDIAYE said that the Government of Guinea should continue on its chosen course of protecting human rights, a course which, while difficult, could be followed with the requisite determination. In particular, while the problems of relations among minorities in Guinea had eased, the time had come to act to pre-empt future problems. In that connection, the Government should pay particular attention to article 27 of the Covenant. He trusted that the representative of Guinea would ensure that the provisions of the Covenant were widely disseminated in his country, and suggested that Guinean human rights organizations should be invited to participate in the preparation of the next report.

49. The CHAIRMAN said that it was clear that the Government of Guinea was headed in the right direction in terms of implementing the provisions of the Covenant, notwithstanding its internal and external political difficulties. The Committee looked forward to an indication of further progress in the third periodic report, the deadline for submission of which would be deferred from November 1993 to a later date, given the short span of time between the current session and the original date of submission for the third periodic report.

50. Mr. THIAM (Guinea) said that the dialogue with the Committee had been extremely fruitful and that his Government welcomed the Committee's cooperation in helping it achieve its human rights goals. It would be useful if the Centre for Human Rights could organize a human rights seminar in Guinea to enhance awareness of the provisions of the Covenant and to support Government initiatives in that area. Appropriate materials for schools would also be valuable. The adoption of the Basic Law would improve the exercise of human rights in Guinea, as well as the rule of law in general. With regard to the keeping of records of admissions to detention centres, the Government did in fact have such a system, and also had a policy of conducting surprise visits at any hour to ensure compliance with the law. Human rights organizations were active in Guinea and helped to prevent human rights violations and to ensure that human rights policy was transparent.

51. Mr. Thiam (Guinea) withdrew.

The meeting was suspended at 12.35 p.m. and resumed at 12.40 p.m.

Draft general comment on article 18 of the Covenant (continued)

52. Mr. DIMITRIJEVIC said that the new paragraphs 9 and 10 he was proposing represented an attempt to reflect the various views expressed in the Committee. Paragraph 9 dealt with the principal limitations relating to article 18.3, and paragraph 10 dealt with other matters, largely falling under article 19.

53. The general logic of paragraph 9 followed that of article 18 of the Covenant, indicating that freedom of religion or belief could be restricted only if limitations were prescribed by law, and then stating the grounds. Paragraph 9 also covered the limitation on the freedom of expression and religion established in order to protect other rights, notably equality and non-discrimination. The paragraph then indicated the grounds on which restrictions on the freedom to manifest religion or belief were not authorized under article 18. Public order (ordre public) was included in square brackets, pending further consideration of that complex topic by the Committee. Paragraph 9 also mentioned that the protection of morals should not be based on

(Mr. Dimitrijevic)

a concept of morality derived exclusively from a single religious tradition or ideology, a formulation which was somewhat weaker than the original draft. Lastly, the paragraph referred to the duty of States parties to report limitations. The other elements of the proposed new paragraphs 9 and 10 were essentially the same as in the previous draft.

The meeting rose at 1 p.m.